

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. 1.137(b)**

FEB 22 2005

First Named Inventor:	Jorn Bullerdiek et al.	Atty. Docket No.:	BS00078P0010US
Serial No.:	09/890,684	Group Art Unit:	N/A
Filed:	04 February 2000	Examiner:	N/A
Title: Preparation for the Prevention and/or Treatment of a Tissue Change of Mesenchymal Origin			

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the Patent and Trademark Office mailed on September 15, 2003. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

1. Petition Fee:

- ☒ Small Entity Fee: \$750.00 - Applicant claims small entity status (See 37 CFR 1.27.)
☐ Other than Small Entity: \$1,500.00

2. Reply and/or fee:

- A. The reply and/or fee to the above-noted Office action in the form of Reply to the "Notification to Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures":

☐ has been filed previously on ____.
☒ is enclosed herewith (including, a computer readable form of the Sequence Listing, a paper copy of the Sequence Listing, Statement Under 37 C.F.R. Sections 1.821(e), 1.821(f), 1.825(a) and 1.825(b) and a copy of the September 15, 2003 "Notification to Comply With Requirements For Patent Applications Containing Nucleotide And/or Amino Acid Sequence Disclosures").

B. The Issue Fee of \$

- ☐ has been paid previously paid on ____
☐ is enclosed herewith.

3. Terminal disclaimer with disclaimer fee:

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

03/02/2005 SNAJARRO 00000108 09890684

01 FC:2453

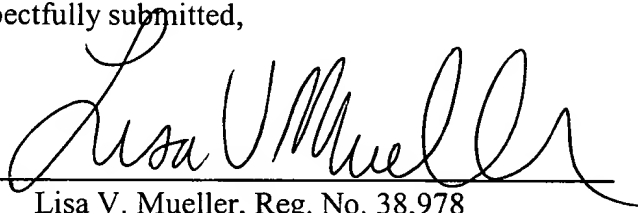
750.00 OP

☐ A terminal disclaimer and disclaimer fee (37 CFR 1.20(d) of ☐ \$55.00 for a small entity, or ☐ \$110.00 for other than small entity, disclaiming a period equivalent to the period of abandonment is enclosed herewith.

4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing date of a grantable petition under 37 C.F.R. 1.137(b) was unintentional.
5. Miscellaneous. Enclosed is a copy of the Decision on Petition mailed January 13, 2005 in connection with the above-identified application.
6. If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account number 23-0785.

Respectfully submitted,

By


Lisa V. Mueller, Reg. No. 38,978

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
Citicorp Center, Suite 3800
500 West Madison Street
Chicago, Illinois 60661-2511
312/876-1800

Enclosures: X

Fee payment.

X

Reply

☐

Terminal Disclaimer Form.

☐

Small Entity Status Form.

X

Other: Decision on Petition mailed on January 13, 2005, computer readable copy of the Sequence Listing, paper copy of the Sequence Listing, Statement Under 37 C.F.R. Sections 1.821(e), 1.821(f), 1.825(a) and 1.825(b) and a copy of the September 15, 2003 "Notification to Comply With Requirements For Patent Applications Containing Nucleotide And/or Amino Acid Sequence Disclosures".



CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this Petition For Revival of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b) is being deposited with the United States Postal Service with sufficient postage at Express Mail Label No. EV 348840515 US in an envelope addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on February 22, 2005.

Aidah Abdallah



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jorn Bullerdiek et al.) Docket No.: BOH6278P0010US
Serial No.: 09/890,684) Group Art Unit: N/A
Filed: August 3, 2001) Examiner: N/A
For: Preparation for the Prevention)
And/or Treatment of a Tissue Change of
Mesenchymal Origin

Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

**Response to Notification to Comply with Requirements for Patent Applications
Containing Nucleotide and/or Amino Acid Sequence Disclosures**

In response to the Response to Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures mailed on September 15, 2003 in connection with the above-identified application, Applicants herewith enclose:

- (a) A computer readable form (CRF) of the "Sequence Listing" (corrected);
- (b) A copy of the "Sequence Listing" in paper format; and
- (c) A statement by Armin K. Bohmann that the contents of the paper and the computer readable form of the Sequence Listing are the same and do include no new matter, as required by 37 CFR Sections 1.821(e), 1.821(f), 1.821(a) and 1.825(b).

If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account number 23-0785.

Respectfully submitted,
Jorn Bullerdiek et al.

By:

Lisa V. Mueller Reg. No. 38,978
Attorney for Applicant

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. Madison Street
Suite 3800
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Tel.: (312) 876-2109
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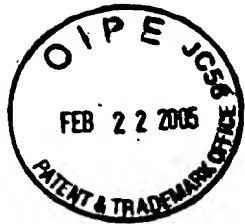


CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this Response to Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures is being deposited with the United States Postal Service with sufficient postage as Express Mail Label No.: EV 348840515 US in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on February 22, 2005.

A handwritten signature in cursive script, reading "Aidah Abdallah".

Aidah Abdallah



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jörn Bullerdiek et al.)
Serial No.: 09/890,684) Group Art Unit: N/A
Filed: August 3, 2001) Examiner: N/A
For: Preparation for the Prevention)
And/or Treatment of a Tissue Change of)
Mesenchymal Origin)

Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. SECTIONS 1.821(e), 1.821(f), 1.825(a), 1.825(b)

Sir:

I, Armin K. Bohmann declare:

1. The enclosed sequence listing information recorded in the computer readable form is identical to the enclosed written paper form of the sequence listing and does not contain any new matter.

2. That I believe that all statements made herein of my own knowledge are true and that all statements made on information and belief are true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the patent application in the United States of America or any patent issuing thereon.

February 14, 2005
Date

Armin K. Bohmann
Armin K. Bohmann



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22303-1450
www.uspto.gov

U.S. APPLICATION NUMBER NO	FIRST NAMED APPLICANT	ATTY DOCKET NO
09/890,684	Jorn Bullerdiek	BOH6277P0001

32116
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. MADISON STREET
SUITE 3800
CHICAGO, IL 60661



INTERNATIONAL APPLICATION NO

PCT/DE00/00364

IA FILING DATE	PRIORITY DATE
02/04/2000	02/04/1999

CONFIRMATION NO. 6746

371 FORMALITIES LETTER



OC000000010876041

RECEIVED
SEP 19 2003

WOOD, PHILLIPS

Date Mailed: 09/15/2003

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

**NOTIFICATION TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS
CONTAINING NUCLEOTIDE AND/OR AMINO ACID SEQUENCE DISCLOSURES**

Applicant is given **TWO MONTHS FROM THE DATE OF THIS NOTICE** within which to file the items indicated below to avoid abandonment. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

The following items **MUST** be furnished within the period set forth below:

- The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 CFR 1.821-1.825 for the following reason(s):
 - The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A substitute computer readable form must be submitted as required by 37 CFR 1.825(d).
 - **APPLICANT MUST PROVIDE:**
 - An initial or substitute computer readable form (CRF) of the "Sequence Listing."
- For questions regarding compliance to 37 CFR 1.821-1.825 requirements, please contact:
 - For Rules Interpretation, call (703) 308-4216
 - To Purchase PatentIn Software, call (703) 306-2600
 - For PatentIn Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

INDIA L EVANS

Telephone: (703) 305-2936

BEST AVAILABLE COPY

PART 1 - ATTORNEY/APPLICANT COPY

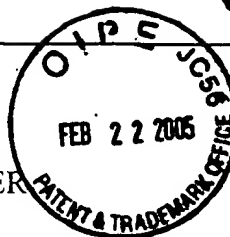
U.S. APPLICATION NUMBER NO 09/890,684	INTERNATIONAL APPLICATION NO PCT/DE00/00364	ATTY DOCKET NO BOH6277P0001
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FORM PCT/DO/EO/922 (371 Formalities Notice)



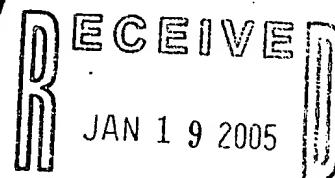


13 JAN 2005
UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

WOOD PHILLIPS KATZ CLARK & MORTIMER
500 W. Madison Street
Suite 3800
Chicago, IL 60661



In re Application of:
BULLERDIEK, Jorn
U.S. Application No.: 09/890,684
PCT No.: PCT/DE00/00364
International Filing Date: 04 February 2000
Priority Date: 04 February 1999
Attorney's Docket No.: BOH6278P0010US
For: PREPARATION FOR THE PREVENTION
AND/OR TREATMENT OF A TISSUE
CHANGE OF MESENCHYMAL ORIGIN

WOOD, PHILLIPS, ET AL

DECISION ON PETITION

This decision is issued in response to applicant's "Petition for Removal of a Holding of Abandonment Under 37 CFR 1.181(a)" filed 06 May 2004, and resubmitted on 09 November 2004 and 07 December 2004. No petition fee is required.

BACKGROUND

On 04 February 2000, applicant filed international application PCT/DE00/00364 which claimed a priority date of 04 February 1999 and which designated the United States. On 10 August 2000, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for payment of the basic national fee was thirty months from the priority date, i.e., 04 August 2001.

On 03 August 2001, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment for the basic national fee, an English translation of the international application, and an executed declaration.

On 09 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905), indicating that proper sequence listing materials, including a computer readable for (CRF) of the sequence listing, were required.

On 29 January 2002, applicant filed a response to the Notification Of Missing Requirements which included a purported CRF of the sequence listing and a "Statement Under 37 CFR 1.821(f)."

On 01 April 2002, the DO/EO/US mailed a Notification Of Defective Response (Form PCT/DO/EO/916) indicating that applicant's response to the Notification Of Missing

Requirements was defective and that proper sequence listing materials were still required. The Notice was accompanied by a "CRF Problem Report" which indicated that the CRF filed by applicant in response to the Notification Of Missing Requirements was damaged. The Notice provided a one-month non-extendable response deadline.

On 22 April 2002, applicant filed a response to the Notification Of Defective Response which states that it was accompanied by a CRF of the sequence listing.

On 03 December 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909).

On 15 September 2003, the DO/EO/US mailed a "Withdrawal Of Previously Sent Notice" stating that the Notification of Abandonment mailed 03 December 2002 was issued in error and was therefore withdrawn. Also on 15 September 2003, the DO/EO/US mailed a "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" (Form PCT/DO/EO/922) again requiring submission of a readable CRF.

On 20 November 2003, applicant filed a response to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures."

On 26 April 2004, the DO/EO/US mailed a second Notice Of Abandonment (Form PCT/DO/EO/909). This Notice indicates that the application is abandoned for failure to file a response to the Notification mailed 15 September 2003.

On 06 May 2004, applicant filed the petition to withdraw the abandonment considered herein. The petition notes that a timely response to the 15 September 2003 Notification was filed on 20 November 2003. The petition includes a copy of the previously filed response, a copy of the stamped return postcard, and a replacement copy of the CRF included with the earlier submission. On 09 November 2004 and 07 December 2004, applicant resubmitted copies of the petition materials.

DISCUSSION

The application file contains a copy of the "Response to Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures." filed by applicant. This response bears a USPTO receipt stamp dated 20 November 2003, confirming that a timely response was filed to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" mailed 15 September 2003, as asserted by applicant in the present petition. Moreover, the itemized return postcard included with the present petition confirms that

the 20 November 2003 submission included a computer disc containing a purported CRF of the sequence listing.

However, the sequence materials contained on this CRF are not in proper form, as detailed in the "Raw Sequence Listing Error Report" accompanying this decision.¹ Thus, although a timely response to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" was filed on 20 November 2003, such response was not in the required format. In light of applicant's failure to file a proper response to the "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" mailed 15 September 2003 (and the failure to date to submit an acceptable CRF of the sequence listing), abandonment of the application was appropriate.

CONCLUSION

Applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181 is **DISMISSED** without prejudice.

Any request for reconsideration of the petition must be filed within **TWO (2) MONTHS** of the mail date of the present application.

In the alternative, applicant might consider filing a petition to revive the unintentionally abandoned application under 37 CFR 1.137(b). Any such petition would need to be accompanied by the sequence listing materials required, including a readable CRF of the sequence listing in the proper format.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

Enclosure: CRF Raw Sequence Listing Error Report processed 13 May 2004

¹ The reviewed CRF is the copy filed by applicant with the petition on 06 May 2004. Based on applicant's statements and the stamped return postcard, this CRF is treated as a copy of the CRF originally filed on 20 November 2003.